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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203884
Party	Plaintiff Ennis, Inc.
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Submission	Motion to Dismiss - Rule 12(b)
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Signature	/s/Scott A. Meyer
Date	09/14/2012
Attachments	Registrants Resp to Motion for Leave to Exceed Page Limit in Resp to Motion to Dismiss.pdf (5 pages)(30467 bytes)

In Re: Application Serial No. 85/324,443
For the Mark: COLOR WARS
Filed: May 18, 2011
Published in the Official Gazette: January 17, 2012

Ennis, Inc.

Opposer,

V.

Joel L. Beling d/b/a Supa Characters Pty. Ltd.

Applicant.

Opposition No. 91203884

Joel L. Beling d/b/a Supa Characters Pty. Ltd.,

Petitioner,

V.

Ennis, Inc.

Registrant.

Cancellation No. 92055374

Registration No. 3,372,884
Mark: COLORWORX

**REGISTRANT’S RESPONSE TO PETITIONER’S MOTION FOR LEAVE TO EXCEED
THE PAGE LIMIT IN ITS RESPONSE TO MOTION TO DISMISS**

COMES NOW, Registrant, Ennis, Inc. (“Registrant”), by and through its undersigned counsel and hereby files this Response to Petitioner’s Motion for Leave to Exceed the Page Limit in its Response to Registrant’s Motion to Dismiss Petitioner’s Second Amended Petition to Cancel and would respectfully show the Board as follows:

1. Following the filing of Registrant’s Motion to Dismiss Petitioner’s Second Amended Petition to Cancel [Doc. #19], Petitioner filed his Response to Petitioner’s Motion to Dismiss [Doc. #12-Cancellation] (hereinafter, the “Response”) contemporaneously with his Motion for Leave to Exceed Page Limit for his Response [Doc #12-Cancellation] (hereinafter, the “Motion for Leave”). Notably, Registrant failed to adhere to proper TTAB and Board protocol which requires seeking prior leave of court and conferring with Registrant’s counsel prior to filing such Motion for Leave.

2. Notwithstanding the Board’s admonitions and directives in its Orders, Petitioner’s Motion for Leave should be denied because: (i) the Motion for Leave violates the Board’s Orders and applicable Trademark Rules, and (ii) no good cause exists to allow Petitioner to file his Response at more than **double** the length of Registrant’s Motion to Dismiss.

I. PETITIONER’S MOTION FOR LEAVE VIOLATES THIS BOARD’S ORDER AND APPLICABLE TRADEMARK RULES

A. Petitioner Did Not Conference with Registrant’s Counsel Prior to Filing his Motion for Leave

3. Registrant hereby incorporates the argument contained in paragraph 4 of Registrant’s Reply in Support of Motion to Dismiss. *See* [Doc. #21].

B. Petitioner Ignores the Board’s Order to File his Motion with the Parent Case

4. Registrant hereby incorporates the argument contained in paragraph 5 of Registrant’s Reply in Support of Motion to Dismiss. *See* [Doc. #21].

II. NO GOOD CAUSE EXISTS TO ALLOW LEAVE TO EXCEED THE PAGE LIMIT

5. Registrant hereby incorporates the argument contained in paragraphs 6 and 7 of Registrant's Reply in Support of Motion to Dismiss. *See* [Doc. #21].

6. Registrant further submits that by granting Petitioner's Motion for Leave, the Board would contravene the very reason why TTAB generally discourages such motions. *See* 37 C.F.R. § 2.128(b). As seen in Petitioner's 55-page Response to Ennis' Motion to Dismiss, rather than *respond* to the contents of Registrant's Motion to Dismiss, Petitioner incessantly expounds upon arguments previously asserted in Petitioner's Second Amended Petition to Cancel and proffers arguments completely outside the scope of Registrant's Motion to Dismiss.

7. Registrant further submits that with respect to all motions and briefs, Registrant has complied with TTAB page limits and the Board's Orders required the designated page limitations be maintained. Regardless of its claims, Registrant was able to draft its Motion to Dismiss in compliance with requirements contained within TTAB Rules and Board Orders. Registrant sees no valid reason why Petitioner should not be expected to do the same.

8. Furthermore, Petitioner's claim that it is necessary to "exceed the page limit by 20 [sic] pages by reason of the egregious nature of Registrant's and Registrant's legal counsel's fraudulent conduct as particularized in Petitioner's Second Amended Petition to Cancel" is without merit and completely unfounded. *See* [Doc. #12-Cancellation, ¶3]. Nothing contained within Fed.R.Civ.P. 9(b) permits the extension of page limits for responses to motions to dismiss, nor does the conclusory label that the claims are "particularized" warrant additional pages be granted in the Response. Petitioner had ample opportunity to place all of his "particularized" allegations in his Second Amended Petition to Cancel, which is obvious given its 145-page length.

9. Although TTAB Rules occasionally permit over-length responses on the basis of reasonableness of the request in light of relevant fact, circumstances, and complexity of the issues, *see* TTAB Rule 537, nothing asserted in Petitioner's Response or other pleadings or motions provides a reasonable justification for granting his Motion for Leave. Instead, Petitioner presumptuously assumes that the Board will grant his Motion for Leave, again leaving Registrant and its counsel with an over-length, verbose, and incoherent brief to which it must attempt to intelligibly and completely respond—all while doing so within its own strict 10-page limitation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Registrant prays that the Board deny Registrant's Motion for Leave to Exceed the Page Limit in its Response to Registrant's Motion to Dismiss, and that Registrant be awarded all other relief to which it is entitled, both at law and in equity

Dated: September 14, 2012

Respectfully submitted,

CHALKER FLORES, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT IN ITS RESPONSE TO MOTION TO DISMISS was served on all counsel of record, this the 14th of September, 2012, by sending the same via electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") and electronic mail service.

/s/Scott A. Meyer

Scott A. Meyer